

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

LATOYIN V. DAVIS,

Plaintiff,

vs.

SPENCER D. GROSS, DOMINO'S
PIZZA, LLC, and SEDGWICK CLAIMS
MANAGEMENT SERVICES, INC.,

Defendants.

8:23CV548

**FINDINGS, RECOMMENDATION
AND ORDER**

This action was filed on December 14, 2023. [Filing No. 1](#). On December 27, 2023, Plaintiff requested summons for Defendants Spencer Gross, Domino's Pizza and AON Risk Insurance and those summonses were issued. [Filing No. 5](#). On February 14, 2024, a summons returned unexecuted as to defendant AON Risk was filed. [Filing No. 7](#). Thereafter, Plaintiff amended his complaint and named Sedgwick Claims Management Services, Inc. as a named defendant. Filing Nos. 11 and 12. A summons was issued for Sedgwick Claims Management Services, Inc. on February 28, 2024. [Filing No. 14](#). On June 18, 2024, The Court issued an Order to Show Cause directing plaintiff to show cause why this case should not be dismissed pursuant to Federal Rule of Civil Procedure 4(m). [Filing No. 16](#)

On June 21, 2024, Plaintiff filed a motion for summary judgment, declaration of facts, and brief in support of his motion for summary judgment. [Filing Nos. 17](#),

18, and 19. Upon review of the filings, the Court construes them to be a response to the Order to show cause. Attached to his filings, Plaintiff purports to show he perfected service on the named defendants via certified mail. However, various defects in service still exist. For example, the certified mail return for Sedgwick Claims Management does not contain a signature but instead contains only the alleged recipient's printed name. [Filing No. 19 at 3](#). The return for Domino's Pizza contains a signature and printed name but does not contain a date of delivery. [Filing No. 19 at 5](#). It appears it was postmarked in January, well before the amended complaint was filed. *Id.* at 7. Finally, Plaintiff did not file a certified mail return, or any other proof of service, for Defendant Spencer Gross. None of the defendants have voluntarily appeared.

On July 8, 2024, Plaintiff filed a "request to resubmit summons" on defendants in person" and supporting facts. [Filing Nos. 20 and 21](#). The Court construes these as a motion to extend time to provide service under Federal Rule of Civil Procedure 4. Pursuant to Rule 4(m), a defendant must be served within 90 days after the complaint is filed or be subject to dismissal. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. Here, the information provided in Plaintiff's "motion for summary judgment" and "request to resubmit summons" indicates he attempted to serve each defendant and likely believed he had properly done so. Moreover, pro se litigants are not held to the same stringent standards as formal pleadings drafted by lawyers. See *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Therefore, the Court finds good cause exists to extend the time for Plaintiff to serve Defendants. But, as Defendants have not yet been properly served or given an opportunity to respond, Plaintiff's motion for summary judgment, [Filing No. 17](#), is premature.

Accordingly,

IT THEREFORE HEREBY IS RECOMMENDED to the Honorable Robert F. Rossiter, Jr., United States District Judge, pursuant to 28 U.S.C. § 636(b), that the Plaintiff's motion for summary judgment, [Filing No. 17](#), be denied without prejudice.

The parties are notified that failing to file an objection to this recommendation as provided in the local rules of this court may be held to be a waiver of any right to appeal the court's adoption of the recommendation.

IT IS FURTHER ORDERED:

1. Plaintiff's motion for additional time to serve defendants, [Filing No. 20](#), is granted. Plaintiff shall perfect service on or before August 22, 2024.
2. The Clerk of the District Court is directed to issue a new summons for each Defendant at the addresses provided by Plaintiff and copied below:

Spencer D. Gross
4404 Grace Ave.
St. Louis, MO 63116

Domino's Pizza, LLC
30 Frank Lloyd Wright Drive
Ann Arbor, MI 48106

Sedgwick Claims Management Services, Inc.
PO Box 14459
Lexington, KY 40512

The Clerk of the Court shall provide the summonses to Plaintiff to serve.

3. Plaintiff shall serve the summonses together with a copy of the Complaint, [Filing No. 1](#), the Amended Complaint, [Filing No. 11](#), and a copy of this order.

Dated this 8th day of July, 2024.

BY THE COURT:

s/ Jacqueline M. DeLuca

United States Magistrate Judge